

State of Wisconsin
Before the Chiropractic Examining Board

In the Matter of the Disciplinary Proceedings Against

Mark Erb, D.C.
Respondent.

Case No. 95 CHI 25, 95 CHI 28

LS9806251CHI

Final Decision and Order

The parties to this proceeding for purposes of s. 227.53, Stats., are:

Mark Erb, D.C.
1802 Talen Street
Menomonie WI 54751

Chiropractic Examining Board
Department of Regulation and Licensing
P.O. Box 8935
Madison WI 53708

Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison WI 53708

The parties having agreed to the attached stipulation, the Chiropractic Examining Board makes the following:

FINDINGS OF FACT

1. Mark Erb, D.C., ("Respondent") was born on December 1, 1961, and is licensed to practice chiropractic in the state of Wisconsin pursuant to license number 2534, first granted April 12, 1990.
2. Between July 18, 1994, and September 9, 1994, Respondent treated Patient G.K., a 69 year old man, thirty-two different times. Respondent did not routinely record objective findings, an assessment of the patient's condition, or a plan for the treatment of the patient.
3. Between August 12, 1993, and February 13, 1995, Respondent treated Patient D.H., a 38 year old woman, 242 times. Respondent did not routinely record objective findings, an assessment of the patient's condition, or a plan for the treatment of the patient.

CONCLUSIONS OF LAW

1. The Chiropractic Examining Board has jurisdiction in this matter pursuant to s. 446.03, Stats.
2. Respondent's failure to routinely record objective findings, assessment of his patients' conditions, or a plan for the treatment of his patients, constitutes practice substantially below the standard of care ordinarily exercised by a chiropractor, in violation of s. Chir 6.02(3), Wis. Admin. Code.

ORDER

Now, therefore, it is ordered that Respondent Mark Erb, D.C., be and hereby is reprimanded.

It is further ordered that Dr. Erb shall successfully complete both *Medicare's New Documentation Guidelines for Evaluation & Management Services*, by Healthcare Cash Management Seminars, Inc., and *Clinical & Legal Implications - Chiropractic Awareness*, by National Chiropractic Mutual Insurance Company. Dr. Erb shall supply satisfactory evidence of the successful completion of the courses to the Board no later than October 1, 1998.

It is further ordered that Dr. Erb shall be responsible for the costs associated with obtaining the education, and that Dr. Erb may not use any portion of the continuing chiropractic education required by this Order in satisfaction of the continuing education requirement for renewal of his credential for the biennial registration period.

It is further ordered that Respondent shall pay the costs of the Department of Regulation and Licensing in the investigation of this matter in the amount of \$600.00.

It is further ordered that any violation of this order shall be grounds for suspension of Dr. Erb's license to practice chiropractic in Wisconsin.

Dated this 25 day of June, 1998.

Wisconsin Chiropractic Examining Board


A Member of the Board

State of Wisconsin
Before the Chiropractic Examining Board

In the Matter of Disciplinary Proceedings Against

Mark Erb, D.C.
Respondent
Case No. 95 CHI 25, 95 CHI 28

Stipulation

It is hereby stipulated between Mark Erb, D.C., personally and on his own behalf and Phillip M Steans, Dr. Erb's counsel, and James E. Polewski, Attorney for the Division of Enforcement, Department of Regulation and Licensing, as follows:

1. This stipulation is entered in resolution of the pending matter concerning Dr. Erb's license. The Stipulation and the proposed Final Decision and Order shall be presented directly to the Chiropractic Examining Board for its consideration and adoption.
2. In resolution of these proceedings, Dr. Erb consents to the entry of the attached Final Decision and Order.
3. Dr. Erb is aware of and understands each of his rights, including:
 - the right to a hearing on the allegations against him, at which the state would have the burden of proving the allegations by a preponderance of the evidence,
 - the right to confront and cross-examine the witnesses against him,
 - the right to call witnesses on him own behalf and to compel their attendance by subpoena,
 - the right to testify himself,
 - the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision,
 - the right to petition for rehearing,
 - the right to be represented at every stage of the proceeding, including the making of any stipulation, by an attorney of his choosing, at his own expense,
 - all other rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.
4. Dr. Erb is aware and understands that by signing this stipulation he voluntarily and knowingly waives the rights set forth in paragraph 3 above, and does voluntarily and knowingly waive those rights.
5. If the terms of this stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this stipulation, and the matter shall be returned to the Division of

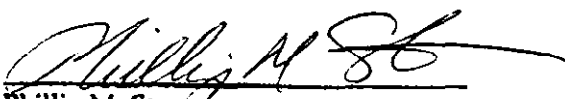
Enforcement for further proceedings. In the event that this stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this stipulation agree that the attorney for the Division of Enforcement and the member of the Chiropractic Examining Board assigned as an advisor in this investigation may appear before the Board for the purpose of speaking in favor of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation.


7. Respondent is informed that should the Board adopt this stipulation, the Board's final decision and order is a public record and will be published in the monthly *Report of Decisions* issued by the department. A summary of the order will be published in the *Wisconsin Regulatory Digest* issued semiannually by the Board. A press release will be prepared and distributed to all press boxes in the State Capitol building, to the press in the community where respondent resides and practices, and to individuals and organizations included on a mailing list maintained by the department. This is standard department procedure and in no way specially directed at Respondent.


Mark Erb, D.C.

6-23-98
Date


Phillip M. Stegns
Attorney for Dr. Erb

6/23/98
Date


James E. Polewski
Attorney
Division of Enforcement

June 22 1998
Date

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE CHIROPRACTIC EXAMINING BOARD

In the Matter of the Disciplinary Proceedings Against

Mark Erb, D.C.,

AFFIDAVIT OF MAILING

Respondent.

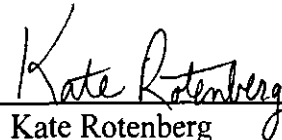
STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.

2. On June 29, 1998, I served the Final Decision and Order dated June 25, 1998, LS9806251CHI, upon the Respondent Mark Erb's attorney by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent's attorney and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is Z 233 819 533.

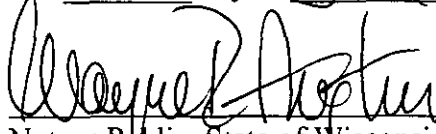
Phillip M. Steans, Attorney
P.O. Box 384
Menomonie WI 54751



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 29th day of June, 1998.



Notary Public, State of Wisconsin
My commission is permanent

NOTICE OF RIGHTS OF APPEAL

TO: PHILLIP M STEANS ATTY

You have been issued a Final Decision and Order. For purposes of service the date of mailing of this Final Decision and Order is 6/29/98. Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. REHEARING.

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Final Decision is shown above.

A petition for rehearing should name as respondent and be filed with the party identified below.

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Final Decision and Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Final Decision and Order if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Final Decision and Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Final Decision and Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

STATE OF WISCONSIN CHIROPRACTIC EXAMINING BOARD
1400 East Washington Avenue
P.O. Box 8935
Madison WI 53708-8935